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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL PALLAGROSI, on behalf of
himself and all others similarly situated,

Plaintiff,

vs.

THE GAP, INC., GAP (APPAREL) LLC, GAP
INTERNATIONAL SALES, INC., BANANA
REPUBLIC LLC, AND BANANA
REPUBLIC (APPAREL) LLC,

Defendants.

Case No. 4:17-cv-05905-HSG

**[PROPOSED] ORDER GRANTING
DEFENDANTS THE GAP, INC., GAP
(APPAREL) LLC, GAP
INTERNATIONAL SALES, INC.,
BANANA REPUBLIC LLC, AND
BANANA REPUBLIC (APPAREL)
LLC’S MOTION TO DISMISS
PLAINTIFF’S CLASS ACTION
COMPLAINT**

Date: March 1, 2018
Time: 2:00 p.m.

Judge: Hon. Haywood S. Gilliam, Jr.
Ctrm.: 2 – 4th Floor

Complaint Filed: October 13, 2017

Pending before this Court is the motion of Defendants The Gap, Inc., Gap (Apparel) LLC, Gap International Sales, Inc., Banana Republic LLC, and Banana Republic (Apparel) LLC's ("Gap") to dismiss Plaintiff Michael Pallagrosi's ("Plaintiff") Class Action Complaint ("Complaint") pursuant to Rule 12(b)(6) and Rule 9(b) of the Federal Rules of Civil Procedure. Having considered the briefing submitted by all parties, supporting declarations and exhibits, the arguments of counsel, and all other matters presented to the Court, IT IS HEREBY ORDERED that:

Gap's Motion to Dismiss Plaintiff's Class Action Complaint is GRANTED WITHOUT LEAVE TO AMEND. *See Reddy v. Litton Indus.*, 912 F.2d 291, 296 (9th Cir. 1990). Accordingly, (1) Count I – California Consumers Legal Remedies Act ("CLRA"); (2) Count III – New Jersey Truth in Consumer Contract, Warranty, and Notice Act ("TCCWNA"); and (3) Count IV – Florida Deceptive and Unfair Trade Practices Act ("FDUTPA") are dismissed with prejudice.

Plaintiff's individual and class claims under the CLRA are dismissed because the CLRA does not apply extraterritorially to Plaintiff. *See McKinnon v. Dollar Thrifty Auto. Grp., Inc.*, No. C-12-4457-SC, 2013 WL 791457, *5-6 (N.D. Cal. Mar. 4, 2013). Furthermore, California's choice of law analysis requires that his claims be pursued under New Jersey and/or Florida law. *See Frezza v. Google Inc.*, No. 12-cv-00237-RMW, 2013 WL 1736788 at *1-2 (N.D. Cal. Apr. 22, 2013).

Plaintiff's individual and class claims under the TCCWNA are dismissed because the TCCWNA does not apply to the circumstances alleged by Plaintiff. *See Dugan v. TGI Friday's, Inc.*, Nos. A-92, A-93, 077567, 077556, 2017 N.J. LEXIS 975 (Oct. 4, 2017) and *Cannon v. Ashburn Corp.*, No. 16-1452 (RMB/AMD), 2016 WL 7130913 at *11, (D.N.J. Dec. 7, 2016).

Plaintiff's individual and class claims under FDUTPA are dismissed because Plaintiff fails to allege an "actual injury," as required by the statute. *See Belcastro v. Burberry Ltd.*, No. 16-CV-1080 (VEC), 2017 U.S. Dist. LEXIS 198414, at *8 (S.D.N.Y. Dec. 1, 2017).

1 Plaintiff's claims are dismissed with prejudice because any proposed amendment would
2 be futile. *See Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 296 (9th Cir. 1990) ("It is not be an abuse
3 of discretion to deny leave to amend when any proposed amendment would be futile").
4

5 SO ORDERED.

6
7 Date: _____

By: _____

Hon. Haywood S. Gilliam, Jr.
U.S. District Court Judge